



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Safford Field Office
711 South 14th Avenue, Suite A
Safford, Arizona 85546-3335
www.blm.gov/az/

July 28, 2014

In Reply Refer To:
4130/4180 (G010)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 6532 6950

Wendy Bryce
646 West 300 South
Pima, Arizona 85543

FINAL DECISION

Dear Ms. Bryce:

INTRODUCTION

The Bureau of Land Management (BLM) issued revised grazing regulations in 1995, which set forth the process of establishing Standards for Rangeland Health (Title 43 Code of Federal Regulations [CFR] 4180.2). The purpose for setting standards and identifying their indicators was to provide BLM with a rational basis for determining whether current management is meeting the Fundamentals of Rangeland Health as described under 43 CFR 4180.1.

Arizona Standards and Guidelines (S&G) for grazing administration have been developed through a collaborative process involving the Bureau of Land Management State S&G Team and the Arizona Resource Advisory Council. Together, through meetings, conference calls, correspondence, and Open Houses with the public, the BLM State Team and RAC prepared Standards and Guidelines to address the minimum requirements outlined in the grazing regulations. These S&G evaluations were conducted using interdisciplinary teams (IDTs) with various resource specialists, representing the biological and physical science disciplines. The IDTs collected, reviewed and analyzed the available data for the purpose of completing range health evaluations.

This document addresses the issuance or renewal of your grazing permit. A final decision is required by the Code of Federal Regulations (CFR) 4100 to be served on any affected applicant, permittee or lessee who is affected by the proposed actions, terms, conditions, or modifications relating to issuance of a grazing permit/lease.

BACKGROUND

The Bureau of Land Management grazing permit for the Horse Mountain Allotment (#4524) expired on 2/28/2005 and is currently authorized under a temporary permit renewed under Public Law 108-108, Section 325. The temporary permit will expire on 02/28/2015. Under Public Law 108-108, Section 325, permit renewals were meant to be temporary pending the completion of the formal permit renewal process, which includes completing rangeland health assessments, evaluating current livestock practices, and determining range health and compliance with the National Environmental Policy Act (NEPA).

A land health evaluation for the Horse Mountain Allotment was completed in 2009 to determine if Code of Federal Regulations (CFR) 4180 and Standards and Guidelines found in the *Fundamentals of Rangeland Health and Standards for Rangeland Health and Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (1997)* and it was determined that, while standards one (upland sites) and portions of three (desired resource conditions for uplands) were being met, standard two (riparian wetland sites) and portions of standard three (desired resource conditions for riparian areas) was not being met.

You, the permittee for this allotment, have requested a renewal. An Interdisciplinary team completed an environmental assessment (DOI-BLM-AZ-G010-2013-0025-EA) for this proposed renewal. The proposed decision was sent out August 29, 2013 and protests were received. These protests have been responded to in the attached table.

FINAL DECISION

Therefore, it is my final decision to implement the proposed action (now described as the selected action) described in the Environmental Assessment (EA) #: DOI-BLM-AZ-G010-2013-0025-EA and listed in full below.

In accordance with 43 Code of Federal Regulations 2130.2, and based upon the allotment evaluation, consultation with affected permittee, interested publics, and recommendations from the Interdisciplinary Assessment Team, our proposed decision is to offer the grazing permit for the Horse Mountain allotment for a period of 10 years with the terms and conditions identified in the Proposed Action of the EA, and listed below in Table 1.

Table 1. Mandatory terms and conditions for the Horse Mountain Allotment.

Allotment	Livestock number	Kind	Grazing Period		Type %PL	Active AUMS
			Begin	End		
45240	26	Cattle/Horse	03/01	02/28	100	312

Additionally, unnamed spring and Horse Spring will be fenced to exclude livestock. Fencing of the two springs will not affect number of AUMs (312) being permitted for the Horse Mountain Allotment. The 5.5 acre sub-watershed above Horse Spring would be thinned (by selectively cutting chaparral vegetation with hand tools). Cuttings would be scattered on areas of bare ground. Currently there is no surface water at Horse Spring. If flows return an additional future

analysis may be completed to determine if there is sufficient water to pipe outside of the enclosure.

A grazing rotation, detailed in the Grazing Plan section below, will be implemented. If, after three years, there is no improvement to the riparian habitat, an additional 190' fence will be built between the Horse Mountain corrals and pasture fence. This will create a 1.4 acre enclosure along Deer Creek. The effectiveness of this enclosure and vegetation response will be monitored for five years and assessed for its effectiveness and management implications. Should information collected subsequent to any renewal indicate changes in management are needed to ensure that the allotment is meeting or making significant progress towards standards and conforming to guidelines, the permit may be modified at any time during the ten-year period.

Grazing Plan:

March 1 through February 28.

Beginning on November 16, 2013, the Horse Mountain and Catchment pastures will be rotated between with seasons of use between May 15 through November 15 and November 16 through May 14. The allotment will be rested between rotations to provide rest for warm and cool season species and riparian habitat (Table 2).

Table 2. Horse Mountain Grazing Rotation

	15-May	Jun	Jul	Aug	Sep	Oct	15-Nov	16-Nov	Dec	Jan	Feb	Mar	Apr	14-May
2013	Allotment Rested							Horse Mtn Pasture						
2014	Catchment Pasture							Allotment Rested						
2015	Horse Mtn Pasture							Catchment Pasture						
2016	Allotment Rested							Horse Mtn Pasture						
2017	Catchment Pasture							Allotment Rested						
2018	Horse Mtn Pasture							Catchment Pasture						
2019	Allotment Rested							Horse Mtn Pasture						
2020	Catchment Pasture							Allotment Rested						
2021	Horse Mtn Pasture							Catchment Pasture						
2022	Allotment Rested							Horse Mtn Pasture						
2023	Catchment Pasture							Allotment Rested						

The following other terms and conditions will be carried forward on the renewed permit:

As a term and condition of this permit, you are required to do the following:

1. Submit a report of your actual use made on the allotment for the previous grazing period March 1 to February 28. Failure to submit such a report by March 15 of the year may result in suspension or cancellation of your grazing permit or lease.
2. This permit is subject to future modification as necessary to achieve compliance with the standards and guidelines (43 CFR 4180).
3. Permittees are required to maintain all range projects for which they have maintenance responsibilities.

4. With the exceptions of salt and or mineral blocks, supplemental feeding is not authorized on public lands unless prior approval is requested and given by the authorized officer.
5. Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of water sources, springs, streams, and riparian habitats.
6. All troughs would be outfitted with wildlife escape structures to provide a means of escape for animals that fall in while attempting to drink or bathe.
7. Livestock would be excluded from unnamed spring and Horse Spring.
8. The permit will be subject to all terms and conditions found on the back side of this permit.
9. If in connection with allotment operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, the permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Authorized Officer of the discovery. The permittee shall continue to protect the immediate area of the discovery until notified by the Authorized Officer that operations may resume.

The BLM would do the following:

- Construct a fence around the unnamed spring and Horse Spring to provide protection from livestock grazing and loafing.
- If, after three years and the completion of a Proper Functioning Condition assessment of the Deer Creek riparian area, the grazing rotation and rest are not enough to improve riparian conditions through recruitment and establishment of riparian vegetation, a 1.4 acre enclosure would be created on Deer Creek by connecting the pasture fence and corral fence across the creek.

RATIONALE

The actions in this Final Decision respond to the Purpose and Need explained in DOI-BLM-AZ-G010-2013-0025-EA. Furthermore, the renewal conforms to the applicable land use plan and the NEPA documentation fully analyses the proposed action and alternatives and constitutes BLM's compliance with the requirements of NEPA.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

A finding of no significant impact (FONSI) was signed on August 29, 2013, and concluded that the decision to implement the selected action, is not a major federal action that will have a significant effect on the quality of the human environment, individually or cumulatively with other actions in the general area. That finding was based on the context and intensity of impacts organized around the 10 significance criteria described at 40 CFR § 1508.27. Therefore, an environmental impact statement is not required. A copy of that FONSI was sent with the proposed decision. The FONSI and EA are also available on the internet here:

<http://bit.ly/HorseMtnEA>

AUTHORITY

The authority for this decision is found in statutory and regulatory authorities contained in the Taylor Grazing Act as amended, the Federal Land Policy and Management Act of 1976, as amended, and Title 43 of the Code of Federal Regulations (CFR), Part 4100 (Grazing Administration-exclusive of Alaska), including but not limited to the following sections:

§4100.0-2 The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 45 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1740).

§ 4100.0-8 The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans...Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

§4110.3 The authorized officer shall periodically review the permitted use specified in a grazing permit or grazing lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

§4110.3-2(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization or, when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

§4110.3-3(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §§4110.3-2 shall be issued as decisions pursuant to 4160.1 of this part, except as provided in paragraph (b) of this section.

§ 4120.3-1 Conditions for range improvements.

- (a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.
- (b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.
- (c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3–2 of this title.
- (d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.
- (e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.
- (f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis will be issued in accordance with § 4160.1.

§ 4120.3-2 Cooperative range improvement agreements.

- (a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).
- (b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines will be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3–5 and 4120.3–6(c).
- (c) The United States will have title to nonstructural range improvements such as seeding, spraying, and chaining.
- (d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§ 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§4130.2(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

§4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

§4130.3-1(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.”

§4130.3-1(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§4130.3-2 The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... of for the protection of other rangeland resources and values consistent with objectives of applicable land use plans,”

§4130.3-3 Following consultation, cooperation and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active grazing use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

§4160.2 “Any applicant, permittee, lessee or other interested public may protest the decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.”

§4180.2(c) The authorized officer shall take appropriate action as soon as practicable, but not later than the start of the next grazing year upon determining that existing grazing practices or

levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with guidelines...”

§ 4160.3 Final decisions.

- (a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

§4180.2(c) The authorized officer shall take appropriate action as soon as practicable, but not later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with guidelines...”

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal of the decision for the purpose of a hearing before an administrative law judge. A period of 45 days from your receipt of the proposed decision is provided for filing an appeal and petition for a stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4. An appellant may also file a petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

The appeal must be in writing and shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and also must comply with the provisions of 43 CFR 4.470. Any appeal should be submitted in writing to:

Scott C. Cooke
Field Manager
711 South 14th Avenue
Safford, Arizona 85546-3321

Filing an appeal does not by itself stay the effectiveness of the final BLM decision. The appeal may be accompanied by a petition for a stay of the decision pending final determination on appeal, in accordance with 43 CFR § 4.471 and 4.479. Any request for a stay of the final decision in accordance with 43 CFR § 4.21 (b) (1) must show sufficient justification based on the following:

- (1) The relative harm to the parties if the stay is granted or denied.

- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to:

- (1) All other parties named in the cc section of this Decision; and
- (2) The appropriate Office of the Solicitor as follows, in accordance with 43CFR § 4.413(a) and (c):

US Department of Interior
Office of the Field Solicitor
Sandra Day O'Connor U.S. Courthouse
401 W. Washington St., SPC 44, Suite 404
Phoenix, Arizona 85003-2151

Finally, in accordance with 43 CFR § 4.472(b), any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and respond, the person must serve copies on the appellant, the appropriate Office of the Solicitor in accordance with Sec 4.413 (a) and (c), and any other person named in the decision.

Sincerely,

/s/ Scott C. Cooke

Scott C. Cooke
Field Manager

Attachment:
Protest Responses

cc:

Western Watersheds Project
c/o Greta Anderson and Erik Ryberg
738 North 5th Avenue, Suite 200
Tucson, AZ 85702

Habitat Specialist
c/o John Windes
Arizona Game and Fish Department
555 North Greasewood Road
Tucson, AZ 85745

Arizona State Land Department
c/o Stephen Williams
1616 West Adams
Phoenix, AZ 85007

Arizona Cattle Growers
1401 North 24th Street, Suite 4
Phoenix, Arizona 85008

Larry Humphrey
P. O. Box 894
Pima, Arizona 85543